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From: Szelag, Matthew
Sent: Thur 2/23/2017 8:04:29 PM
Subject: WA HHC briefing materials
WA WQS key messages FINAL - 11-14-16.docx
Qs and As 11 4 16.docx

Hi Lucy,

Here's a couple documents (second one is much more detailed) from the time of the decision that I think could be used as briefing material for Mike and Dan. Also, I copied an email summary below HQ prepared for Mike a couple weeks ago (adding a few updates). And just a reminder if you want more information on PCBs specifically, we prepared the talking points for the January 25th Task Force meeting. There is likely some helpful information in there.

Let me know if you want to discuss. Angela – if you recall any other documents that would be helpful, please let us know.

Background Information on the Revisions of Certain Water Quality Criteria Applicable to Washington.

- CWA section 303(c)(2)(B) requires states to adopt numeric water quality criteria for all priority toxic pollutants for which EPA has published CWA section 304(a) criteria recommendations.
- In 1992, EPA promulgated the National Toxics Rule (NTR) at 40 CFR 131.36, establishing chemical-specific numeric criteria for 14 states and territories, including Washington, that were not in compliance with CWA section 303(c)(2)(B).
- Until 2016, the federal human health criteria in the NTR remained applicable to Washington's waters.
- Over several years, EPA worked with Ecology to consider establishing new water quality standards based on a more realistic estimate of the amount of fish Washingtonians eat and thus the pollutants they are exposed to.
- The state of Washington missed several commitments in the past to adopt protective human health criteria (and to revise certain implementation tools (e.g., variances and compliance schedules)). Consequently, EPA proposed revised human health criteria for Washington on September 14, 2015.
- On March 1, 2016, Puget Soundkeeper Alliance et al. asked a court to order EPA to finalize its proposed rule within 30 days.
- On August 1, 2016, Washington submitted to EPA for review under CWA section 303(c) human health criteria for certain pollutants, based on new data and information, along with revised implementation tools.
- On August 3, 2016, the court ruled that EPA had until November 15, 2016 to act on Washington's submittal and finalize the federal rule.
- Consistent with 40 CFR 131.11, EPA reviewed Washington's human health criteria to determine whether they are protective of Washington's applicable designated uses and based on sound scientific rationale. It is important to note that while the EPA carefully considers scientific defensibility and protectiveness of both the inputs used to derive criteria and the resulting criteria values, it is ultimately on the criteria values that EPA takes approval or disapproval action under CWA section 303(c). EPA evaluated Washington's criteria values against criteria that the EPA determined would be protective of the state's designated uses and scientifically defensible (e.g., based on appropriate bioaccumulation factors (BAFs) and protective relative source contribution (RSC) values of less than 1).
- EPA determined that there are instances where Washington's criteria are as stringent as or more stringent than criteria the EPA determined would be protective of the state's designated uses and scientifically defensible, using appropriate inputs. CWA section 510, 33 U.S.C. § 1370, preserves the authority of states to adopt more stringent standards than otherwise required by the CWA. Therefore, the EPA approved Washington's criteria (45) where they are as stringent as or more stringent than scientifically defensible criteria that the EPA determined would be protective of Washington's designated uses, consistent with CWA requirements and the EPA's implementing regulations at 40 CFR 131.11.
- EPA also determined that Washington's criteria that are less stringent than the EPA's final federal criteria are not protective of Washington's designated uses and, therefore, do not comply with CWA section 303(c) and 40 CFR 131.11. Therefore, the EPA disapproved Washington's criteria (143) where they are not sufficiently protective of the applicable designated uses.
- In accordance with the court order, EPA took action on November 15, 2016, EPA approved 45 human health criteria submitted to EPA by the Washington Department of Ecology, and issued a final rule that revised 144 additional human health criteria applicable to Washington's waters. EPA also approved Ecology's revisions to its variance and compliance schedule provisions, which give the state and affected industries and municipalities needed flexibility and time to implement these new standards while making reasonable progress in improving water quality.
- The combination of EPA's final rule and EPA's action on the state's submittal ensures that the human health criteria are set at levels consistent with the best available science, including local and regional information, as well as applicable EPA policies, guidance, and legal requirements, to protect Washington fish consumers from exposure to toxic pollutants.
- EPA's final rule took effect on December 28, 2016.

- There is no current litigation on EPA's federal rule for human health criteria in Washington. However, there is related litigation regarding EPA's decision to not update the state's criteria for arsenic, thallium, and dioxin in a complaint filed by NWEA on February 21, 2017.
- On February 21, 2017, EPA was informed that the several industry groups (including Association of Washington Businesses, Northwest Pulp & Paper Association, and American Forest & Paper Association) filed a petition requesting EPA reconsider its action on the state rule and repeal or withdraw the federal rule.

Information regarding the effective date and whether there is an opportunity for reconsideration of EPA's position on the state rule.

- The Washington water quality standards rule is not on the list of actions for an extended effective date.
- EPA's rule to revise certain human health criteria applicable to Washington's waters is a final rule that took effect on December 28, 2016.
- Additionally, certain human health criteria that Washington submitted to EPA became applicable for CWA purposes upon EPA's approval on November 15th.
- EPA promulgation of WQS can be challenged in federal district court within six years of EPA's promulgation.

Information regarding standards where the technology does not exist to be able to measure/meet the standard.

- The CWA regulations require human health-based water quality criteria to be developed using sound scientific rationale to protect the use which is usually fishable and swimmable waters.
- Water quality standards are meant to help restore and preserve the quality of our nation's waters. Criteria must protect designated uses without consideration of potential implementation costs.
- All states have criteria for toxic chemicals that are below current detection limits, and EPA generally does not expect that states will set water quality-based limits in permits below the detection limits of the approved analytical methods. Rather, states implement these criteria by requiring pollutant concentrations beyond allowable mixing zones to be undetectable by current approved analytical methods.

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